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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,674	10/27/1999	MICHAEL NEHLS	8535-029-999	4973

20583 7590 06/10/2002  
PENNIE AND EDMONDS  
1155 AVENUE OF THE AMERICAS  
NEW YORK, NY 100362711

EXAMINER  
MARSCHEL, ARDIN H

ART UNIT	PAPER NUMBER
1631	

DATE MAILED: 06/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO

EXAMINER	
ART UNIT	PAPER NUMBER
20	

DATE MAILED:

*Below is a communication from the EXAMINER in charge of this application*

**COMMISSIONER OF PATENTS AND TRADEMARKS**

**ADVISORY ACTION**

THE PERIOD FOR RESPONSE:

a)  is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection  
b)  expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).  
 Applicant's response to the final rejection, filed 2/15/02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1.  The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:

- There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- They raise new issues that would require further consideration and/or search. (See Note).
- They raise the issue of new matter. (See Note).
- They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: the proposed addit to cl 14 rises new issues including NEW MATTER as the critics have not been found in the section pointed to nor in surrounding pages.

2.  Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.  
3.  Upon the filing an appeal, the proposed amendment  will be entered  will not be entered and the status of the claims will be as follows:

Claims allowed: none  
Claims objected to: none  
Claims rejected: 3 and 10-14

However:

Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4.  The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because of reason of record applicants argue that the arguments are specific to the tested cells and not required for survival and allege that the cell will differentiate etc. These arguments still are not diff. the myriad of non-existing genes not isolated with control samples to compare to before any specificity.  
5.  The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction  has  has not been approved by the examiner.  
 Other

*Ardin H. Marschel*  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER

09/428,674  
PTOL-303 (REV. 5-89)